STATE of INDIANA

INDIANAPOLIS, 46204

INDIANA UTILITY REGULATORY COMMISSION
302 W. WASHINGTON STREET, ROOM E306

February 29, 2000

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelve Street, S.W. TW-A325
Washington, D.C. 20554

Re: In the Matter of Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer of Control, CC Docket No. 98-184

Dear Secretary Salas:

The Indiana Utility Regulatory Commission files the enclosed comments in response to the January 31, 2000 Public Notice, Commission Seeks Comment on Supplemental Filing Submitted by Bell Atlantic Corporation and GTE Corporation, Docket No. 98-184.

Included in this filing are an original and 5 copies. Please stamp one copy "received" and return it to the Indiana Utility Regulatory Commission in the self-addressed, stamped envelope that is enclosed.

The contact person for the IURC is as follows:

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302 W. Washington Street, Rm E306
Indianapolis, IN 46204

Please contact Joel Fishkin, Principal Utility Analyst (317/233-3464) if there are any problems with this filing.

Cordially,

Sandra Ibaugh

Sandra Ibaugh
Director of Telecommunications

Enclosures

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
GTE Corporation,	)	
Transferor,	)	
	)	
and	)	CC Docket No. 98-141 4
	)	
Bell Atlantic Corporation,	)	
Transferee,	)	
	)	
For Consent to Transfer of Control	)	

Comments of the Indiana Utility Regulatory Commission (IURC)

March 1, 2000

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I. Introduction and Summary

The Indiana Utility Regulatory Commission (IURC) files these comments to assist the FCC's review of the proposed merger between GTE Corporation (GTE) and Bell Atlantic Corporation (Bell Atlantic) as addressed in CC Docket No. 98-184. Our comments will not focus on whether the merger is anti-competitive; rather we will focus on the status of competition in GTE's local service territory, GTE's general behavior as an incumbent local exchange company (ILEC), differences between the merger conditions proposed by Bell Atlantic/GTE and the conditions imposed upon SBC Communications, Inc. (SBC)/Ameritech Corporation (Ameritech) by the FCC, and our experience with the SBC/Ameritech merger conditions.

On July 28, 1998, GTE and Bell Atlantic announced that they had executed a merger agreement and had begun to obtain all shareholder and regulatory approvals necessary to consummate the merger. On October 2, 1998, William F. Kruetz, Director of Regulatory and Governmental Affairs for GTE North, Inc., sent a letter to the IURC describing the structure of the merger and indicating that no approval is needed in the state of Indiana since the merger is between parent corporations. On November 18, 1998, in Cause No. 41332, the IURC initiated an investigation into the merger under I.C. § 8-1-2-59, with the intent of filing comments with the FCC.[1] The IURC focused its investigation on developing a record on which to base those comments as well as determining the applicability of I.C. § 8-1-2-83(a), which requires that sales, assignments, transfers, leases, or encumbrances of a public utility's "franchise works or system to any other person...or corporation" be approved by the IURC. On December 15, 1998 the IURC issued a set of 50 questions to GTE, Bell Atlantic, and relevant subsidiaries. On February 5, 1999, intervenors in Cause No. 41332 sent a set of 158 questions to the same parties. On March 16 and 17, 1999, GTE and Bell Atlantic were questioned in an evidentiary hearing regarding the proposed merger. On May 26, 1999, the IURC issued an order finding that it did have authority to approve the merger pursuant to I.C. § 8-1-2-83(a). On July 30, 1999 the Indiana Supreme Court overturned the IURC's May 26, 1999 decision, ruling that Section 83(a) does not require IURC approval of the proposed transaction. The IURC proceeded with the investigation under I.C. § 8-1-2-59 and the parties filed briefs stating their positions on the proposed merger.

As will be described in greater detail below, the IURC summarizes our comments:

1) There is little competition within GTE's local exchange territory in the state of Indiana. As of June 30, 1999, GTE has sold 468 UNE loops and 6,400 access lines were provided through total service resale.

2) GTE has actively obstructed the implementation of competition in the state of Indiana by attempting to add language in interconnection agreements which 1) implements an interim universal service charge that the IURC expressly rejected, 2) uses terms like "actual costs"

[1] In the Matter of the Investigation on the Commission's Own Motion into All Mattters Relating to the Merger of GTE Corp. and Bell Atlantic Corp., Cause No. 41332.

when the IURC imposed a TELRIC cost standard, 3) restricts the resale of lifeline service, payphone access lines, customer specific contracts, and operator and directory assistance, 4) contains a lower wholesale discount than the interim wholesale rate or offers no discount whatsoever, and 5) may allow GTE to unilaterally revise the terms of an interconnection agreement or retroactively seek compensation. GTE also unnecessarily delayed the implementation of final wholesale rates.

3) Bell Atlantic/GTE should be held to most of the merger conditions imposed on SBC/Ameritech. Most important, Bell Atlantic/GTE should be held to the same carrier-to-carrier discounts as SBC/Ameritech.

4) Some of the merger conditions imposed on SBC/Ameritech need to be altered to effectively increase the deployment of advanced services and increase competition in the state of Indiana. More specifically, 1) the FCC should include specific xDSL deployment benchmarks and timelines in the merger conditions 2) the Most-Favored-Nation provisions for out-of region and in-region arrangements should be revised to include arbitrated agreements and agreements that were negotiated or arbitrated prior to the merger closing date 3) Bell Atlantic/GTE must make all pro-competitive offerings through a Statement of Generally Available Terms that is approved by each in-region state commission prior to the merger closing date.

Our comments should not be perceived as opposition to the merger conditions, or merger conditions in general, but rather constructive criticism, based on our own experience dealing with GTE in Indiana and the merger conditions imposed on SBC/Ameritech, as well as the fact that we will be responsible for implementing many of these conditions, if approved. It also is important to note that our comments are not directed so much toward the merits of the conditions themselves, or the issues they seek to address, but rather focus on their implementation. We hope that this feedback will help the FCC determine whether or not these conditions as proposed will further the public interest, or should be revised to meet that standard.

II. More Than Four Years After the Passage of TA-96, GTE Faces little Competition for Local Telephone Service

The IURC understands the FCC's concern regarding the impact of the proposed Bell Atlantic/GTE merger on the competitive environment for local telephone service, both within and outside of the regions currently served by Bell Atlantic and GTE. The IURC shares these concerns. The following analysis is offered to provide the FCC additional insight into the development (or lack) of local competition within the state of Indiana.

The FCC's data indicates *there is very little real competition for local telephone service in GTE's Indiana territory.* Table 1 indicates that GTE, which serves 996,000 (29.3%) of Indiana's 3.4 million access lines, lost 6,868 of its total voice grade access lines to local competitors. Of

TABLE 1

Selected GTE North (Indiana) Responses to the Fifth FCC Local Competition Survey Data Through June 30, 1999

Line Type	Residential Switched	Non-Residential Switched	Special Access or Private Lines	Switched UNE Loops	Total Voice Grade Lines
Total voice grade lines provided to end users:	699,567	284,126	5,339		989,032
Lines owned that were provided under a UNE loop arrangement (1)				468	468
Line owned provided under a (wholesale) Total Service Resale Arrangement (2)	1,494	4,890	16		6,400
Total voice grade lines provided to end users and other telecommunications carriers (3)	701,061	289,016	5,355	468	995,900

1. Pursuant to 47 U.S.C. 153(29) and 251(c)(3).
2. Pursuant to 27 U.S.C. 251 (c)(3).
3. Data also includes lines provided to other telecom carriers at retail rates.

the 6,868 total lost lines, 6,400 lines were lost to total service resale and 486 were lost as unbundled network elements.

The IURC is especially concerned that only 468 of these lines were "lost" as unbundled network elements. Many industry experts agree that UNEs and interconnection arrangements are the only viable avenues for the development of true, lasting competition for local telephone service. A competitive local exchange carrier (CLEC) that provides service through resale of the underlying ILEC's service is wholly dependent upon its competitor to provide the physical elements of local telephone service. Thus, there is no opportunity for new products or services. Furthermore, with a wholesale discount of approximately 20% there is little opportunity for price differential.[2] By this point in time, four years after the passage of TA-96, the IURC had hoped to see a significant number of voice grade access lines in Indiana being served by facilities-based competitors. **The IURC does not believe that 468 access lines (0.047% of total lines) is a significant share of GTE's market for local telephone service in the state of Indiana.**

[2] In Cause No. 41117 In the Matter of the Commission Investigation and Generic Proceeding on Wholesale Rates for GTE North Incorporated and Contel of the South Under the Telecommunictions Act of 1996 and Related Statutes, the IURC set a 19.58% wholesale discount for CLECs that require GTE's operator services and 22.30% wholesale discount for CLECs that do not require GTE's operator services.

III. GTE Actively Resists State Regulation

Among the many duties of a state commission under TA-96 are approving interconnection agreements and determining the discount for wholesale services provided by the ILEC. GTE has repeatedly inserted language into interconnection agreements that is contrary to IURC or FCC rules and orders. When the IURC approved final wholesale rates for GTE (interim rates had been set previously), GTE was instructed to file a new wholesale tariff with final rates, yet GTE proceeded to file a wholesale tariff that did not discount certain services. These actions are anti-competitive and burden the IURC, which could be using scarce resources more effectively.

A. GTE's Voluntarily Negotiated Agreements Are Not in the Public Interest

The IURC is extremely concerned about the prospect of GTE being allowed to implement the FCC's merger conditions in Indiana through interconnection or resale agreements, or amendments thereto. In several of its orders on GTE's voluntarily negotiated agreements, the IURC has stated that "[i]t appears to the Commission that GTE is not negotiating in good faith, since it persists in including language in its interconnection agreements that the IURC has found does not meet the public interest standard outlined in Section 252(e) of TA-96."[3]

Several aspects of these voluntary agreements are particularly troubling, including: (1) GTE's belief that States are obligated under TA-96 to provide explicit universal service funding and its resulting attempt to use such agreements as vehicles for imposing an interim USF surcharge on other carriers; (2) GTE's belief that it should be able to recover, through these agreements, certain costs that it otherwise believes it cannot recover under the terms and conditions of the agreements; (3) GTE's attempt to impose resale restrictions that are not permitted by TA-96, the FCC, or this Commission; and (4) GTE's reservation of the right to unilaterally alter the agreements and, in the event of certain cost or revenue changes, seek retroactive compensation from the affected carriers. A more detailed description follows.[4]

1. GTE is Attempting to Impose an Interim Universal Service Surcharge

GTE has recently attempted to recover certain interim universal service surcharges, first in the IURC's TELRIC investigation,[5] and then in the IURC's generic universal service and access

[3] *See, e.g.*, Joint Verified Application of GTE and Time Warner for Commission Approval of a Voluntarily Negotiated Interconnection, Resale, and Unbundling Agreement, Cause No. 40737-INT-32 (Order Issued Aug. 25, 1999), at 7; Joint Verified Application of GTE and Phone-Link for Commission Approval of a Voluntarily Negotiated Resale Agreement, Cause No. 40737-INT-33 (Order Issued Sept. 1, 1999), at 7.

[4] The IURC is also attaching Joint Verified Application of GTE and Time Warner for Commission Approval of a Voluntarily Negotiated Interconnection, Resale, and Unbundling Agreement, Cause No. 40737-INT-32 (Order Issued Aug. 25, 1999) so the FCC has a full text of an IURC Order.

[5] In re: Commission Investigation and Generic Proceeding on GTE's Rates for Interconnection, Service, Unbundled Elements, and Transport and Termination Under TA-96 and Related Indiana Statutes, Cause No. 40618.

charge investigation.[6] Furthermore, GTE has attempted to hold both competitors and even the process of competition, itself, hostage to these universal service concerns: "**The Commission** should not set UNE prices in the absence of at least an interim universal service fund and **should not permit competition in Indiana** until this issue is addressed."[7] GTE has matched its anti-competitve rhetoric with anti-competitive behavior, as these comments demonstrate. Finally, GTE has never adequately supported its legal arguments that the IURC is required under Sections 254(e) and 254(b)(5) to implement an interim intrastate USF surcharge, nor has it adequately supported its attempt to use TELRIC proceedings or interconnection agreements to resolve universal service issues.

The IURC rejected those attempts, and so GTE has tried to use its negotiated agreements to accomplish the same objective.[8] Although negotiating parties do have a fair amount of flexibility under Section 252(e), States must still ensure that negotiated agreements are non-discriminatory and are consistent with the public interest, convenience, and necessity [Section 252(e)(2)(A)(ii)]. The IURC has taken a firm position that GTE's repeated attempts to impose an interim USF surcharge on its competitors through negotiated agreements, thereby circumventing prior IURC orders, does not pass this public interest test. If the FCC were to authorize GTE to fulfill the merger conditions through an interconnection agreement(s) or amendment(s), the IURC is very concerned that GTE might make similar attempts in the "merger" agreements or amendments.

2. GTE Attempts to Recover Costs That GTE Otherwise Believes it May Not Be Able to Recover Under the Terms Of The Agreements

Several of GTE's agreements have contained language that:

> appears to grant GTE the right to recover certain unspecified costs that GTE otherwise believes it cannot recover under the terms of the agreement[s]. It further identifies a specific manner in which costs are to be quantified (i.e., actual costs) and subsequently to be recovered (i.e., through non-recurring charges). The Commission stated in its orders in Cause Nos. 40737-INT 24, 25, and 27 that it had several concerns about this language as it may act to undermine the ability of this Commission and/or the FCC, through the normal course of regulation, to determine how GTE's costs that are **not** "otherwise reimbursed under this Agreement" are recovered. In the earlier orders, the [IURC] stated approval of

[6] In re: Commission Investigation Into Any and All Matters Relating to Access Charge Reform and Universal Service Reform, Cause No. 40785.
[7] Cause No. 40618, Response of GTE North Incorporated and Contel of the South, Inc. to Proposed Orders and Post-Hearing Briefs of AT&T, MCI and US Xchange (filed March 13, 1998), at 14 [emphasis added].
[8] See, *e.g.*, Voluntarily Negotiated Resale Agreement Between GTE and Phone-Link, Cause No. 40737-INT-33 (Sept. 1, 1999), at 5.

> this section would amount to blanket approval for GTE to recover those costs and could limit – if not preclude – any further [IURC] review beyond the narrow statutory standards set forth at Section 252(e)(2)(A)(ii) . . . [9]

It is important to note that the IURC is not attempting to superimpose Section 252(d) costing and pricing requirements on voluntarily negotiated agreements, which would be inconsistent with Section 252(e)(2)(A). Rather, the IURC is attempting to preserve whatever ratemaking authority the IURC and the FCC may have to set prices for services not covered under these agreements. The IURC believes that, because the above-quoted language is ambiguous and may undermine both the IURC and the FCC's authority, it is not consistent with the public interest, convenience, and necessity.

3. GTE's Restrictions on Resale Do Not Meet the Public Interest Standard

Several of GTE's proposed agreements have prohibited the resale, under certain conditions, of specific services such as: 1) lifeline services and services to the disabled; 2) payphone access lines; 3) ICB[Individual Case Basis]/Contract services; and 4) operator and directory assistance.[10] In some cases, interconnection agreements contained a lower wholesale discount than the interim wholesale rate approved by the IURC; in other cases, some items, such as non-recurring charges, were not discounted.[11] This is contrary to previous orders in Cause No. 39983, the IURC's generic local competition investigation. As stated elsewhere, the IURC does not believe it is consistent with the public interest, convenience, and necessity for GTE to use its negotiated agreements to circumvent prior IURC orders.

4. GTE Imposes Language That Allows It to Make Unilateral Changes to Agreements and (Possibly) Collect Retroactive Compensation

The IURC has expressed its concern about certain ambiguous language that GTE could interpret as blanket authority to unilaterally revise the terms of an interconnection agreement pending the outcome of any IURC proceedings that concern GTE's costs (other than the proceeding on the affected agreement). The IURC has previously found that this particular language is not in the public interest, convenience, and necessity.

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[9] Voluntarily Negotiated Resale Agreement Between GTE and Phone-Link, Cause No. 40737-INT-33 (Order Issued Sept. 1, 1999), at 3.

[10] *See, e.g.*, Voluntarily Negotiated Resale Agreement Between GTE and dPI-Teleconnect, Cause No. 40737-INT-28; and Voluntarily Negotiated Resale Agreement Between GTE and Topp Comm Inc, Cause No. 40737-INT-35.

[11] Ibid.

First, were the IURC to approve this language, it might be precluded from prescribing how GTE is to identify and recover its costs in those other proceedings in the future. Second, if GTE's costs or revenues change as a result of another proceeding, the ambiguous language in the voluntary agreements might allow GTE to retroactively seek compensation from the negotiating carrier as a result of such a change. Furthermore, this ambiguous language could undermine the IURC's previous orders in those other proceedings by allowing GTE to apply different (i.e., unapproved) rates, terms and conditions to the negotiating carrier if GTE does not agree with, or reinterprets one of those orders. Finally, the IURC notes that several of the agreements contain additional provisions that provide avenues for GTE and the respective negotiating carriers to renegotiate or reinterpret this agreement if there is a change in regulatory policy either at the federal or state level; as such, other language in the agreement provides the same relief that a benign interpretation of this problematic language would grant.[12]

B. GTE Unnecessarily Delayed Implementation of Its Wholesale Tariff

On October 21, 1999 the IURC issued an order setting final wholesale discounts to be applicable to GTE North Inc. and Contel of the South's (GTE North) retail rates for resale services.[13] GTE North was ordered to file a tariff for resale services, consistent with the October 21, 1999 order, within 30 days of the approval of the order. GTE North filed its tariff on November 22, 1999. After reviewing the tariff, the IURC staff found that instead of simply altering the rates, GTE selected private line services and did not provide a discount for that service.[14] However, previous IURC's orders, which followed Section 251 (c)(4), explicitly stated all GTE North's telecommunications services, as defined by TA-96, must be discounted. The IURC staff indicated to GTE North the wholesale tariff was not in compliance and GTE North decided to revise the tariff filing to bring it into compliance on January 25, 2000. The tariff was approved on January 27, 2000, more than two months after the initial filing. The IURC staff spent valuable resources to undertake what should have been a simple approval and the processing of the final wholesale tariff was unnecessarily delayed.

IV. Bell Atlantic/GTE Should be Held to Many of the Same Merger Conditions as SBC/Ameritech

Bell Atlantic/GTE proposes a comprehensive package of commitments patterned after the FCC merger conditions in the SBC/Ameritech merger. Bell Atlantic/GTE contends these

[12] *See, e.g.*, Article III: Sect. 34 ("regulatory agency control"); Sect. 35 ("changes in legal requirements"); Sect. 41 ("severability"); and Sect. 43 ("subsequent law") in Cause No. 40737-INT-33 (GTE/Phone-Link).

[13] In the Matter of the Commission Investigation and Generic Proceeding on Wholesale Rates for GTE North Incorporated and Contel of the South Under the Telecommunictions Act of 1996 and Related Statutes, Cause No. 41117, October 29, 1999.

[14] GTE's wholesale tariff is a simple spreadsheet and changing a discount rate should have been a simple procedure.

commitments are made to gain prompt approval from the FCC.[15] We find it curious that Bell Atlantic/GTE did not consult with the FCC staff in a manner similar to the process in the SBC/Ameritech merger. Consultation with the FCC Staff would not be important if the conditions Bell Atlantic/GTE is proposing were identical to the conditions imposed upon SBC/Ameritech. Yet, they are different. Bell Atlantic/GTE contends the conditions are not the same due to the fundamental difference between the two mergers. The SBC/Ameritech merger involved a combination of adjacent Regional Bell Operating Companies (RBOCs), while the GTE's local services are "islands in the other RBOC's seas."[16] Of the 30 conditions imposed upon SBC/Ameritech, Bell Atlantic/GTE contends 22 have been adopted in whole or have been superceded by FCC orders. The IURC will address the conditions that are most important to the state of Indiana and provide a recommendation. The IURC will also address some differences between the SBC/Ameritech conditions and the BA/GTE conditions, which were not indicated in the Supplemental Filing, and may need further review.

Carrier-to-Carrier Promotional Discount

Bell Atlantic/GTE is not proposing to offer carrier-to-carrier promotional discounts similar to the discounts imposed on SBC/Ameritech. Bell Atlantic/GTE uses the argument that, unlike the merger of SBC/Ameritech, potential competition is not a concern. In the SBC/Ameritech merger the FCC used the argument that SBC was a strong potential competitor in Chicago and Ameritech was a strong potential competitor in St. Louis. Due to the elimination of potential competition, promotional discounts for CLECs were warranted. The IURC did not support the potential competition argument in the SBC/Ameritech merger and thus does not support Bell Atlantic/GTE's use of this argument to avoid carrier-to-carrier promotional discounts imposed upon SBC/Ameritech.[17] In the state of Indiana, SBC was no more a potential competitor than RBOCs such as Bell Atlantic, BellSouth, and USWest or a host of CLECs.

Furthermore, the IURC does not support the notion that simply because SBC and Ameritech were neighbors and GTE's local services are "islands in the other RBOC's seas," the merger between SBC and Ameritech is materially different than the merger between Bell Atlantic and GTE. From the IURC's perspective the mergers look very similar: an RBOC is merging with a large telecommunications provider that has a substantial number of customers in Indiana. Ultimately, the strength of a telecommunications provider is the number of customers a company directly controls by providing service to an end-user or indirectly controls by being in a wholesale relationship with a CLEC that has the eventual end-user. Since the IURC did not adhere to the potential argument in the SBC/Ameritech merger and the merger between SBC and Ameritech and Bell Atlantic and GTE look similar to the state of Indiana, the IURC recommends

[15] In the Matter of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer of Control (CC Docket 98-184), Supplemental Filing of Bell Atlantic and GTE, January 27, 2000, page 2.
[16] Ibid., page 18-19.
[17] In re: The Investigation on the Commission's Own Motion Into All Matters Relating to the Merger of Ameritech Corporation and SBC Communications Inc., Cause No. 41255 (October 8, 1999), page 9-10.

that the carrier-to-carrier promotional discounts be added to the Bell Atlantic/GTE merger commitments.

Carrier-to-Carrier Performance Plans

Bell Atlantic/GTE proposes to use the OSS performance plan used in GTE territories for GTE states and the performance plan developed in New York for Bell Atlantic states rather than implementing a single performance plan as imposed on SBC/Ameritech.[18] The IURC will provide comments based on its investigation of OSS performance measurements and standards in Indiana.[19] Cause No. 41324 began more than a year ago to develop a set of OSS performance standards and measurements for United Telephone Company of Indiana, Inc. d/b/a Sprint, Ameritech Indiana, and GTE. After several technical conferences and long discussions trying to develop a common set of standards for all three companies, the parties agreed through a joint stipulation that GTE and Sprint would use the standards developed in California and Ameritech Indiana would use the standards developed in Texas.

The IURC recommends a single performance plan. By definition it is more difficult and time consuming to ensure compliance with carrier-to-carrier performance standards under two sets of measures. If two standards are imposed, the IURC recommends that the FCC increase the number of compliance staff to monitor a substantial list of measurements and standards.

Out-of-Territory Competitive Entry

Bell Atlantic/GTE commits to spending not less than $500 million, within three years, to provide local service or to provide advanced services to mass market customers outside its service territory.[20] At least half of the money should be used for local service.[21] If Bell Atlantic/GTE does not follow through on its commitment, the company will make payments to the U.S. Treasury equal to 150 percent of any shortfall.[22] In the SBC/Ameritech merger conditions there was an elaborate set of timetables and specific areas the companies agreed to enter with monetary penalties paid to the U.S. Treasury if entry does not occur. The IURC's experience in the state of Indiana leads the IURC to believe that, when utilities pledge to spend a specific dollar amount on a program or specific investment, it is very difficult to ensure compliance with the requirement. In one case, Ameritech pledged to expend $120 million over six years for

[18] In the Matter of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer of Control (CC Docket 98-184), Supplemental Filing of Bell Atlantic and GTE, January 27, 2000, page 25.
[19] In re: Commission's Generic Investigation of Incumbent Local Exchange Carriers' Provision of Operating Support Systems ("OSS"), Cause No. 41324.
[20] In the Matter of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer of Control (CC Docket 98-184), Supplemental Filing of Bell Atlantic and GTE, January 27, 2000, page 29.
[21] Since Bell Atlantic/GTE has indicated to the IURC it plans to enter the Indianapolis market, the IURC will monitor carefully how much of $500 million is spent in the state of Indiana.
[22] Regarding the payment to the U.S. Treasury, we reiterate our July 16, 1999, comments from the SBC/Ameritech Indiana merger proceeding (CC Docket No. 98-141) in that we believe the penalties should be direct to some aspect of telecommunications such as GTE's retail customers or CLECs.

infrastructure improvements, but the IURC staff found much of the investment did not occur.[23] Without a large support staff monitoring expenditures, Bell Atlantic/GTE has a great incentive to invest the money in other projects, invest unwisely, or not invest at all. Similar to the IURC's discussion of OSS performance plan, the IURC recommends that the FCC increase the number of compliance staff to monitor Bell Atlantic/GTE's expenditures.

InterLATA Services Pricing

Although Bell Atlantic commits to not charging customers a mandatory fee for minimum interLATA service, GTE is only willing to institute a policy when the market leader, AT&T, complies.[24] The IURC has declined to regulate interLATA rates for interexchange companies; however, the IURC is a little puzzled by GTE's explanation and its relationship to a competitive market in interLATA toll. GTE suggests it will be disadvantaged in comparison to other major long distance carriers if it cannot charge a mandatory minimum.[25] By "disadvantaged" the IURC assumes GTE claims it cannot recover its costs and remain competitive if it cannot charge a mandatory minimum. If GTE cannot provide a more rational explanation, we recommend that the FCC require GTE to eliminate any mandatory fee for minimum interLATA service.

Other Differences Between the Bell Atlantic/GTE Federal Merger Conditions and the SBC/Ameritech Federal Merger Conditions

The IURC compared the merger conditions proposed by Bell Atlantic/GTE and the conditions imposed on SBC/Ameritech and found a few minor differences. Although the list may not be exhaustive, the IURC points out these changes to urge the FCC, which has thorough knowledge of the SBC/Ameritech federal merger conditions, to examine the proposed Bell Atlantic/GTE merger conditions with close scrutiny and require Bell Atlantic/GTE to defend all changes, however subtle they may appear.

In Part I, Section 2, when defining advanced services, one sentence is added: "Notwithstanding the other provisions of this Section, Bell Atlantic/GTE retains the right to invest in any technology or asset as long as it is not used to provide Advanced Services."

In Part 1, Section 3(a), when describing joint marketing under 272 requirements for separate advanced services affiliate a phrase is added: "without the Advanced Services Affiliate being deemed a successor or assign of a BOC or incumbent LEC for purposes of 46 U.S.C. §§ 153(4) or 252(h)."

In Part 1, Section 3(e), when describing the grace period, the word "license" is added.

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[23] For an extended discussion of this item, see the IURC's June 16, 1999 Comments in the SBC/Ameritech Indiana Merger (Docket No. 98-141), at page 4

[24] In the Matter of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer of Control (CC Docket 98-184), Supplemental Filing of Bell Atlantic and GTE, January 27, 2000, page 30.

[25] Ibid.

V. The FCC Should Alter the Merger Conditions Imposed on the SBC/Ameritech Merger So Advanced Services Are Deployed and Competition Further Develops

The IURC was an active participant—filing two sets of comments to the FCC—in the SBC/Ameritech merger proceeding (CC Docket No. 98-141) and is actively involved in SBC/Ameritech's compliance with the federal merger conditions. The IURC Staff has had informal meetings with Ameritech Indiana since last November and has been in frequent contact with members of the FCC's Merger Compliance Oversight Team. Furthermore, the IURC has formally asked the FCC for clarification of certain merger conditions. The IURC takes this opportunity to relay our extensive experience implementing the SBC/Ameritech merger conditions and the relationship of these conditions to the proposed conditions in the Bell Atlantic/GTE merger. Specifically, we examine conditions regarding the deployment of advanced telecommunications capabilities, the Most-Favored-Nation provisions for out-of-region and in-region arrangements, and the use of interconnection agreements or amendments thereto to make pro-competitive offerings.

A. The FCC Should Include Specific xDSL Deployment Benchmarks and Timelines in the Merger Conditions

The proposed Bell Atlantic/GTE merger conditions include several pages of conditions regarding the deployment of advanced telecommunications capabilities, notably xDSL, that mirror the conditions imposed on the SBC/Ameritech merger. As stated in our July 16, 1999 comments in the FCC's investigation of the SBC/Ameritech merger, a major shortcoming of the proposed conditions is that they do not include a specific timeline for xDSL deployment, nor benchmarks for the scope of deployment. The IURC is pleased that Bell Atlantic/GTE has agreed to offer broadband services to low-income customers in urban and rural areas *once the companies have made the decision to deploy these capabilities*, and we support the *eventual* provision of such services through a separate affiliate. The conditions, however, lack any requirement that Bell Atlantic/GTE offer such services by a date certain and/or to a specified percentage/number of end users.

The IURC's experience with GTE has demonstrated that the carrier has little desire to upgrade its infrastructure, particularly to deploy broadband services in its rural Indiana exchanges. In March 1999, the Mayor of Greencastle, Indiana, and the Executive Director of the Greencastle/Putnam County Economic Development Center, Inc. contacted the IURC to discuss GTE's failure to deploy certain telecommunications services in its Greencastle exchange. Specifically, GTE had refused community requests to deploy central-office based voice mail and ISDN, among other services and capabilities. After four informal meetings over an eight-month period between the IURC, GTE, and the city of Greencastle, GTE eventually agreed to provide voice mail because the service would only require an investment of approximately $20,000. However, GTE refused to deploy ISDN, even though the company provided ISDN in many of its

more urban exchanges. GTE stated that ISDN deployment to the Greencastle exchange was not part of its Indiana business plan.

On January 10, 2000, State Representative Susan Crosby filed House Bill 1159 in the Indiana General Assembly. HB 1159 would, among other things, allow the IURC to revoke a telephone company's authority to do business in all or part of its service area or impose a civil penalty of $25,000 per day if the IURC finds that "the telephone company has failed to provide service in that part of its service area under review that is comparable to service it provides to comparable communities in other parts of its service area." On January 17, 2000, GTE sent a letter to the Mayor of Greencastle and the Executive Director of the Greencastle/Putnam County Economic Development Center, Inc. which stated that GTE would deploy ISDN-Basic Rate Interface by the end of 2000, and would install ISDN-Primary Rate Interface within 120 days of a firm order for the service.[26]

In short, the proposed merger conditions do little to expedite the deployment of xDSL in GTE's Indiana service territory, since: 1) Bell Atlantic/GTE and its Advanced Services affiliate have no additional incentive to deploy such capability, pursuant to these conditions; and 2) facilities-based competition for local telephone service, let alone xDSL service, is virtually non-existent in Indiana. There is little value in a merger condition that requires GTE to deploy xDSL services to a pool of low-income rural wire centers once the carrier has deployed xDSL to 20 rural wire centers, since experience has shown that GTE has no business plan for deploying broadband capabilities to rural customers now or in the immediate future. The IURC therefore recommends that Section IV. ("Non-Discriminatory Rollout of xDSL Services") be revised so Bell Atlantic/GTE is required to deploy xDSL service to 20 rural wire centers and 20 urban wire centers no later than 24 months after the merger closing date.[27]

Furthermore, the FCC should revise the proposed language in paragraph 15.a. of the proposed merger conditions to clarify that the state commission will approve the urban and rural wire center designations. The IURC's experience with the SBC/Ameritech merger conditions proves that the term "in consultation with" will potentially be interpreted by the ILECs in a manner that provides little role for state commission input. For example, Ameritech Indiana initially proposed a break-point of 10,000 access lines (but indicated that Ameritech Corporation was considering 15,000 lines) to designate a wire center as urban or rural pursuant to Section IV. of the SBC/Ameritech merger conditions. The IURC reviewed the data provided by Ameritech Indiana and recommended a 20,000 access line breakpoint. Ameritech Indiana finally decided on a break-point of 15,000 access lines.

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[26] January 17, 2000 letter from James Abbott, Area Manager-Customer Operations, GTE Network Services, to the Honorable Nancy A. Michael, Mayor, City of Greencastle, Indiana, and William A. Dory, Executive Director, Greencastle/Putnam County Economic Development Center, Inc.

[27] Unlike Ameritech Indiana, GTE has deployed xDSL in the state of Indiana, though not on a ubiquitous basis. According to the FCC's Fifth Voluntary Local Competition Survey, GTE deployed 382 ADSL lines to Internet Service Providers as of June 30, 1999. The IURC recently sent out its own local competition survey for calendar year 2000; when the IURC receives GTE's response, it will file more current xDSL line counts with the FCC.

B. The Most-Favored-Nation Provisions for Out-of-Region and In-Region Arrangements Should be Revised to Include Arbitrated Agreements and Agreements that Were Negotiated or Arbitrated Prior to the Merger Closing Date

Section IX. ("Most-Favored-Nation Provisions for Out-of-Region and In-Region Arrangements") of the proposed merger conditions contains two critical shortcomings. First, according to Bell Atlantic/GTE's proposed language, arbitrated interconnection agreements will not be eligible for Most-Favored-Nation (MFN) treatment across the combined Bell Atlantic/GTE region, whether such agreements were approved by a state commission before or after the merger closing date. As stated in the IURC's July 16, 1999 comments in the FCC's investigation of the SBC/Ameritech merger:

> ...Arbitrated agreements were deemed to be in the public interest by state commissions and are subject to the provisions of section 252(i) of the Telecommunications Act of 1996 (TA-96). Therefore, the IURC believes all interconnection agreements, whether voluntarily negotiated or arbitrated, should be subject to the same Most-Favored-Nation status.[28]

The IURC believes that the FCC may be able to benefit from the insight the IURC has gained implementing Sections 251 and 252 of TA-96. The IURC has one of the most pro-competitive Section 252(i) policies in the nation.[29] The IURC's Section 252(i) policy allows a CLEC to "adopt" or "MFN into" a previously approved interconnection agreement—whether voluntarily negotiated or arbitrated—after 20 days of its submission of a letter to the IURC which identifies the agreement that it seeks to adopt. Since July 1998, 30 carriers have adopted a previously-approved interconnection agreement between Ameritech Indiana or GTE and another telecommunications carrier. Thirteen carriers adopted a previously-approved interconnection agreement between GTE and another telecommunications carrier, 12 of whom adopted a single agreement: the arbitrated interconnection agreement between GTE North, Inc. and US Xchange of Indiana, LLC. Obviously, CLECs operating in the state of Indiana have found that arbitrated interconnection agreements between GTE and other telecommunications carriers contain the most favorable rates, terms and conditions, and thus are the most attractive for MFN. Given the IURC's experience with GTE's continued insertion of anti-competitive language in its "voluntarily negotiated" interconnection agreements, as described earlier, it is easy to understand why a CLEC that wants to operate in GTE's Indiana service area would adopt an arbitrated

[28] In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorization from Ameritech Corporation, Transferor, to SBC Communications Inc., Transferee, CC Docket No. 98-141, Comments of the Indiana Utility Regulatory Commission, July 16, 1999.

[29] A copy of the IURC's policy governing Section 252(i), as outlined in General Administrative Order 2000-1, Policies and Procedures Governing Interconnection Agreements can be found on http://www.ai.org/iurc/telecom.html

agreement, since the IURC would not allow GTE to impose an anti-competitive term or condition such as an interim universal service surcharge through an arbitration proceeding.

The IURC also believes that Most-Favored-Nation should not be limited to negotiated agreements approved after the merger closing date because the bulk of interconnection agreements have already been negotiated or arbitrated and the limited time frame makes this provision virtually useless. The IURC is not persuaded by Bell Atlantic/GTE's contention that this merger, because it is "a true merger of equals", does not require the merging parties to be "bound by terms agreed to in other states prior to the merger and over which they had no say."[30] The structure of this transaction is irrelevant to the overriding concern that further industry consolidation could thwart the development of competition for local telephone service, particularly given GTE's already anti-competitive practices in the state of Indiana. Thus, if the conditions contained in Section IX. are to truly be effective, the FCC must expand Bell Atlantic/GTE's MFN offering to include voluntarily negotiated and arbitrated interconnection agreements between GTE, Bell Atlantic, or affiliates of either carrier that were approved by a state commission prior to the merger closing date.

Unfortunately, the FCC did not require SBC/Ameritech to grant merger MFN status across state boundaries to arbitrated agreements or agreements that were negotiated prior to the merger closing date. The IURC's experience with the SBC/Ameritech merger conditions in the state of Indiana has done nothing to change our original position, as stated in our July 16 comments. To date, not a single carrier has sought to import an agreement negotiated with SBC/Ameritech in another state. In fact, all CLECs that have requested to MFN into an interconnection agreement after the merger have sought Indiana-specific agreements that were arbitrated or negotiated prior to the merger closing date. The market has shown that Section IX. of the proposed GTE/Bell Atlantic merger conditions must be revised to include pre-merger interconnection agreements, particularly arbitrated interconnection agreements, if this condition is to promote competition for local telephone service and/or ameliorate any potential anti-competitive impacts of the merger.[31]

C. Bell Atlantic/GTE Must Make All Promotional Offerings through a Statement of Generally Available Terms That Is Approved by Each In-Region State Commission Prior to the Merger Closing Date

The IURC's experience with the SBC/Ameritech merger conditions has demonstrated that the use of interconnection agreements or amendments thereto is not an effective means for an ILEC to make the pro-competitive offerings required by the merger conditions available to eligible CLECs. Given GTE's anti-competitive interconnection practices, the IURC has no reason to

[30] In the Matter of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer of Control (CC Docket 98-184), Supplemental Filing of Bell Atlantic and GTE, January 27, 2000, page 25.
[31] The IURC also encourages the FCC to consider re-opening the record in the SBC/Ameritech merger investigation to apply a similar condition on SBC/Ameritech.

believe that the proposed Bell Atlantic/GTE merger conditions as written will be any more effective than those applied to SBC/Ameritech.

To date, the IURC has reviewed several voluntarily negotiated interconnection agreements and amendments between Ameritech Indiana and other telecommunications carriers that were filed after the merger closing date (October 8, 1999). The IURC is concerned that at least two of these agreements contain language which does not comply with the merger conditions. For example, in our Order on First Amendment in Cause No. 41268-INT-17, the IURC found that a voluntarily negotiated amendment between DSLnet Communications, LLC and Ameritech Indiana did not comply with the collocation terms and conditions of the FCC's First 706 Order, and thus was not in compliance with paragraphs 37 and 38 of the merger conditions:

> As stated earlier in this order, the First Amendment between DSLnet and Ameritech does not comply with the terms and conditions of the FCC's First 706 Order. Since the amendment was filed on September 24, 1999, prior to the FCC's October 6, 1999 Order approving the SBC/Ameritech merger, the Commission is not required to consider Ameritech Indiana's compliance with Paragraphs 37 and 38 from Attachment C of the Merger Order in its review of the First Amendment. However, the Commission expects that forthcoming interconnection agreements or amendments to existing interconnection agreements between Ameritech Indiana and other telecommunications carriers will comply with the FCC's First 706 Order, as required by these paragraphs. Therefore, the Commission should not see the terms and conditions in the DSLnet/Ameritech Indiana First Amendment that do not comply with the FCC's First 706 Order, as described above, in future interconnection agreements between Ameritech Indiana and other telecommunications carriers.[32]

Unfortunately, the IURC found identical language in a voluntarily negotiated interconnection agreement between Ameritech Indiana and Diversified Communications, Inc. that was filed for IURC approval one month after the merger closing date.[33] In the spirit of federal-state collaboration, the IURC sent a letter to Larry Strickling, Chief of the FCC's Common Carrier Bureau, on January 18, 2000 that requested "interpretation or clarification of the First 706 Order" to specifically inform the IURC's review of the Ameritech Indiana/Diversified interconnection agreement, and more generally to assist the IURC's efforts to monitor Ameritech Indiana's compliance with the federal merger conditions. FCC staff informally recommended that the

[32] DSLNet Communications, LLC's Petition for Commission Action Regarding Adoption of Interconnection Agreement Pursuant to Sections 252(e) and 252(i) of TA-96 to Establish an Interconnection Agreement with Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana, Cause No. 41268-INT-17, Order on First Amendment, December 15, 1999.

[33] Verified Submission of Indiana Bell Telephone Company, Inc. d/b/a Ameritech Indiana for Commission Approval of an Interconnection Agreement Arrived at through Voluntary Negotiations with Diversified Communications, Inc. Within Ninety (90) Days and Without Hearing Pursuant To and In Accordance With Section 252(e) of the federal Telecommunications Act of 1996, Cause No. 40572-INT-61.

IURC also file the January 19 letter in the FCC's collocation proceeding[34], which the IURC did on January 24.

Absent a response from the FCC, the IURC granted interim approval to the Ameritech Indiana/Diversified agreement on February 2, 2000. In addition to the IURC's concern about the potentially non-compliant collocation terms and conditions, the IURC also expressed concern that Ameritech Indiana might not be making the pro-competitive promotional offerings in the merger conditions available to CLECs:

> Many of the merger requirements would benefit Diversified if they were incorporated into this voluntarily negotiated interconnection agreement. This Commission is left to wonder whether Ameritech Indiana actually is making available the discounts and other promotional offerings in the FCC's merger conditions to CLECs, since it is hard to believe that a CLEC would not seek a discount if a discount was available. This Commission sees nothing that would preclude Diversified from availing itself of any of these provisions in the future through amendments to this agreement.[35]

The first fundamental problem with permitting an ILEC to extend the pro-competitive merger offerings through interconnection agreements or amendments thereto is that there is no regulatory oversight of the ILEC's performance. For example, if the ILEC offers a CLEC collocation terms and conditions that do not comply with the FCC's First 706 Order (and thus do not comply with the federal merger conditions), the CLEC has two choices: 1) engage in arbitration, which is costly and time-consuming, in order to receive the collocation terms and conditions to which it is entitled; or 2) accept less favorable terms and conditions in order to enter the market more quickly and at less cost. If the goal of the merger conditions is to promote competition, then CLECs should not be forced into arbitration in order to enjoy the pro-competitive offerings contained therein.

Second, the use of interconnection agreements and amendments thereto provides no vehicle for state commissions to ensure the ILEC's compliance. How can the IURC ensure that the ILEC is extending the rates, terms and conditions contained in the federal merger conditions to CLECs, when these issues are "negotiated" behind closed doors and filed for approval with the IURC pursuant to Section 252(e)? Indeed, if SBC/Ameritech offers a CLEC terms and conditions that do not comply with the federal merger conditions, the IURC is faced with a "Catch 22", as illustrated by the Ameritech Indiana/Diversified agreement: the IURC either approves rates,

[34] In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket 98-147.

[35] Verified Submission of Indiana Bell Telephone Company, Inc. d/b/a Ameritech Indiana for Commission Approval of an Interconnection Agreement Arrived at through Voluntary Negotiations with Diversified Communications, Inc. Within Ninety (90) Days and Without Hearing Pursuant To and In Accordance With Section 252(e) of the federal Telecommunications Act of 1996, Cause No. 40572-INT-61, Interim Order, February 2, 2000, page 7.

terms and conditions that do not comply with the federal merger conditions, and thus are "not consistent with the public interest, convenience, and necessity" pursuant to Section 252(e)(2)(A)(ii), or the IURC rejects the agreement, thus delaying the entry of the CLEC into the market. Under either scenario, the ILEC benefits to the detriment of the CLEC.[36]

In order to avoid the problems discussed above, the IURC recommends that the FCC require Bell Atlantic/GTE to file a Statement of Generally Available Terms (SGAT)[37] in each of the company's in-region states which includes all of the pro-competitive offerings required by the proposed merger conditions, including but not limited to: discounted surrogate line sharing charges (paragraph 7); OSS discounts for the provision of advanced services (paragraph 25); and collocation terms and conditions that comply with the FCC's governing rules (paragraph 28).[38] CLECs would be able to incorporate by reference any of the rates, terms and conditions contained in the SGAT into their interconnection agreements with GTE. Finally, and most importantly, Bell Atlantic and GTE would not be permitted to consummate their merger until the SGAT has been filed with and approved by each relevant state commission.[39] This last provision is critically important for two reasons. First, Bell Atlantic/GTE has no incentive to provide a compliant SGAT after the merger closing date. Second, some state commissions such as the IURC have no enforcement authority. Therefore, the IURC cannot fine GTE if it files a non-compliant SGAT, or does not even file an SGAT.

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[36] GTE has exhibited similar behavior in the state of Indiana, specifically, its continued inclusion of an "interim universal service surcharge" in its voluntarily negotiated interconnection agreements with CLECs. We refer the FCC to the IURC's extensive discussion of GTE's anti-competitive interconnection practices, as described earlier in these comments.

[37] The term "SGAT" is from TA-96, specifically Section 252(f). The IURC is using the term generically to describe a document that contains all pro-competitive offerings.

[38] The IURC recognizes that paragraph 38 of the SBC/Ameritech merger conditions, and similar language in the proposed Bell Atlantic/GTE conditions, allows the companies to make collocation rates, terms and conditions available through "tariffs and/or agreements". On October 29, 1999, William D. McCarty, Chairman of the IURC, sent a letter to Kent A. Lebherz, President of Ameritech Indiana, which notified Mr. Lebherz that a collocation tariff should have been filed with the IURC by October 8, 1999. In a November 11 letter to Chairman McCarty, Mr. Lebherz stated that "the express language of the FCC's Merger Conditions gave Ameritech Indiana the latitude to 'file tariffs and/or offer amendments'. And in both instances Ameritech Indiana elected to offer collocation and shared transport via contract amendments." During informal meetings with IURC staff, Ameritech Indiana has repeatedly refused to file a collocation and/or shared transport tariff with the IURC. If the FCC decides that Bell Atlantic/GTE should be allowed to offer collocation through tariffs and/or interconnection agreements, the FCC should rewrite the proposed merger conditions to clarify that the state commission, not the company, determines the format that is utilized.

[39] The IURC envisions a process by which GTE would file an SGAT in the state of Indiana and the IURC would have 90 days to approve the SGAT. If the IURC does not approve the SGAT in 90 days, the FCC would intervene and mediate discussions between the IURC and GTE. If mediation is not effective, the FCC would have authority to approve the SGAT. Under no circumstances could the SGAT go into effect without final approval from the IURC or the FCC.

VI. Conclusion

The merger conditions proposed by Bell Atlantic/GTE purport to promote the equitable and efficient deployment of advanced services, ensure open local markets, foster out-of-region competition, and improve residential phone service. The IURC's comments have focused primarily on deployment of advanced services and promoting competition in the local exchange market.

Regarding the deployment of advanced services, the IURC is not confident GTE will provide advanced service ubiquitously. Providing xDSL service is a far cry from providing infrastructure such as voice mail and ISDN, which as the comments have shown, GTE deployed in one rural Indiana community only after eight months of meetings and the threat of legislation. Furthermore, the proposed merger conditions do little to expedite the deployment of xDSL in GTE's Indiana service territory, since: 1) Bell Atlantic/GTE and its Advanced Services affiliate have no additional incentive to deploy such capability, pursuant to these conditions; and 2) facilities-based competition for local telephone service, let alone xDSL service, is virtually non-existent in Indiana. There is little value in a merger condition that requires GTE to deploy xDSL services to a pool of low-income rural wire centers once the carrier has deployed xDSL to 20 rural wire centers, since experience has shown that GTE has no business plan for deploying broadband capabilities to rural customers now or in the immediate future. The IURC therefore recommends that Section IV. ("Non-Discriminatory Rollout of xDSL Services") be revised so Bell Atlantic/GTE is required to deploy xDSL service to 20 rural wire centers and 20 urban centers no later than 24 months after the merger closing date.

Regarding competition in GTE's local service territory, we reiterate that competition is virtually non-existent, especially for facilities-based competition. Furthermore, GTE has attempted to stall the very process of competition: "[The Commission] should not permit competition in Indiana until this issue [universal service funding, at least on an interim basis] is addressed."[40] The IURC is not optimistic that the merger conditions proposed by Bell Atlantic will do anything to increase competition. First, Bell Atlantic/GTE has eliminated a key component of the SBC/Ameritech merger conditions—carrier-to-carrier discounts. Second, the IURC's comments have shown that the primary avenue by which CLECs obtain the benefits of the merger conditions— interconnection agreements—is likely to be ineffective in the state of Indiana. GTE's use of interconnection agreements in Indiana is often anti-competitive, contrary to previous IURC orders (and, thus, not consistent with the public interest, convenience, and necessity), and could undermine the authority of both the IURC and the FCC. Furthermore, the IURC's experience with the SBC/Ameritech Indiana merger conditions shows that the process by which CLECs can obtain Most-Favored-Nation provisions is deficient. If the conditions contained in Section IX. are to truly be effective, the FCC must expand Bell Atlantic/GTE's MFN offering to include voluntarily negotiated and arbitrated interconnection agreements

[40] Cause No. 40618, Response of GTE North Incorporated and Contel of the South, Inc. to Proposed Orders and Post-Hearing Briefs of AT&T, MCI and US Xchange (filed March 13, 1998), at 14.

between GTE, Bell Atlantic, or affiliates of either carrier that were approved by a state commission prior to the merger closing date.

Given the IURC's experiences with GTE's interconnection agreements in the state of Indiana and experience with the SBC/Ameritech federal merger conditions, the IURC strongly urges the FCC not to permit GTE to implement the merger conditions via interconnection/resale agreements or amendments. Instead, the IURC recommends the use of an SGAT to provide pro-competitive benefits of the merger to CLECs. An SGAT that is approved prior to the consummation of the merger allows the state commissions and the FCC to ensure that all the pro-competitive provisions of the merger conditions are followed.

March 1, 2000

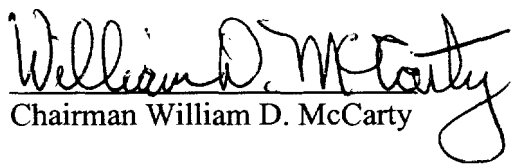
INDIANA UTILITY REGULATORY COMMISSION

Submission of Comments to the Federal Communications Commission
March 1, 2000

In re: In the Matter of GTE Corporation, Transferor, and Bell Atlantic Corporation,Transferee For Consent to Transfer of Contral (CC Docket No. 98-184)

The Indiana Utility Regulatory Commission submits the foregoing comments to the Federal Communication Commission (FCC) under the previously cited docket.

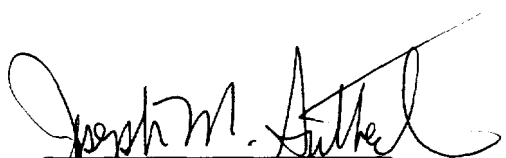
The Executive Secretary of the Indiana Utility Regulatory Commission is hereby directed to submit these comments to the FCC, in accordance with that Agency's procedural requirements.



Chairman William D. McCarty

FOR THE INDIANA UTILITY REGULATORY COMMISSION

ATTEST



Joseph Sutherland
Executive Secretary to the Commission

STATE OF INDIANA

ORIGINAL

INDIANA UTILITY REGULATORY COMMISSION

JOINT VERIFIED APPLICATION OF GTE NORTH INCORPORATED, CONTEL OF THE SOUTH INC., D/B/A GTE SYSTEMS OF INDIANA ("GTE") AND TIME WARNER TELECOM OF INDIANA, L.P. ("TIME WARNER") FOR COMMISSION APPROVAL OF AN INTERCONNECTION, RESALE AND UNBUNDLING AGREEMENT ARRIVED AT THROUGH VOLUNTARY NEGOTIATIONS, WITHIN 90 DAYS AND WITHOUT HEARING PURSUANT TO AND IN ACCORDANCE WITH SECTION 252(e) OF THE FEDERAL TELE-COMMUNICATIONS ACT OF 1996, PUB. L. NO. 104-104, 110 STAT. 56 (1996) [CODIFIED AT 47 U.S.C. §252(e)]	)	**CAUSE NO. 40737-INT 32** **APPROVED:** **AUG 25 1999**

BY THE COMMISSION:
Thomas Cobb, Administrative Law Judge

On May 28, 1999, GTE North Incorporated, Contel of the South, Inc., d/b/a GTE Systems of Indiana (collectively, "GTE"), and Time Warner Telecom of Indiana, L.P. ("Time Warner") filed a Verified Joint Application with the Commission commencing this Cause pursuant to Section 252(e) of the federal Telecommunications Act of 1996 (the "Act"),[1] by which they seek approval of an interconnection agreement in Indiana. The Agreement between GTE and Time Warner may be approved within ninety (90) days after its submission and without hearing pursuant to Section 252(e)(4) of the Act (47 U.S.C. §252(e)(4)) and pursuant to the Amended Interim Procedural Order issued in Cause No. 39983 dated August 21, 1996.

On June 5, 1996, in Cause No. 39983 referenced above, the Commission initially established generally applicable guidelines, practices and procedures to be followed by any entity seeking to file under the Act for approval of agreements. Those guidelines were modified by the Commission's Amended Interim Procedural Order in Cause No. 39983, dated August 21, 1996.

Within twenty (20) days following the submission of this Agreement, pursuant to the Commission's Amended Interim Procedural Order, neither the Office of the Utility Consumer Counselor nor any telecommunications carrier that was not a party to the negotiated Agreement filed any written opposition or comments with regard to the Agreement. In view of the foregoing, and based upon the Commission's guidelines applicable to voluntarily negotiated interconnection agreements, the Commission finds this matter ripe for issuance of its Order herein.

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[1] Pub.L.No. 104-104, 110 Stat. 56 (1996)(to be codified at 47 U.S.C. 151 et seq.).

1. **Jurisdiction and Statutory Standard for Review.** Section 252(a)(1) of the Act provides that "an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsection (b) and (c) of Section 251" for interconnection, services, or network elements. We find GTE to be an "incumbent local exchange carrier" as that term is broadly defined in Section 251(h) of the Act and as used in Section 252(a) of the Act. We further find that Time Warner is a "telecommunications carrier" as that term is defined in Section 3(a)(49) of the Act and as used in Section 252 of the Act.

Based upon the allegations of the Verified Joint Application, it has been demonstrated that the Agreement was arrived at through voluntary negotiations between the parties as contemplated in Section 252(a)(1) of the Act and addresses interconnection services to be provided between the parties pursuant to Section 251 of the Act. Pursuant to Section 252(a)(1) of the Act, an interconnection agreement, arrived at through negotiations, "shall be submitted to the State Commission under subsection (e) of this section." Subsection 252(e)(1) states:

> (e) APPROVAL BY STATE COMMISSION –
>
> (1) APPROVAL REQUIRED. – Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

Based upon the foregoing, we find we have jurisdiction of the parties and subject matter of this proceeding.

Section 252 of the Act establishes procedural requirements and substantive review standards which a state commission must follow in determining whether to approve or reject interconnection agreements of the kind contemplated in Section 252(a) of the Act. Section 252(e)(2)(A) of the Act limits the grounds upon which a State commission may reject a negotiated[2] interconnection agreement subject to its review under the Act. It states in pertinent part as follows:

> (2) GROUNDS FOR REJECTION – The State commission may only reject --
> (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that --
> (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
> (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience and necessity;

[2] Section 252(e)(2)(A) of the Act specifically pertains to interconnection agreements adopted by negotiation, while Section 252(e)(2)(B) pertains to agreements adopted by arbitration under Section 252(b) of the Act.

Section 252(e)(4) of the Act provides that the State commission must either approve or reject the negotiated interconnection agreement within ninety (90) days of it being submitted or it "shall be deemed approved."

2. **Findings.** After a careful review of the interconnection agreement, there are several provisions that we find to be inconsistent with the public interest, convenience or necessity and may violate prior Commission orders.

Article III, Section 35

Section 35 states that no rule of construction requiring interpretation against the drafting party hereof shall apply in the interpretation of this agreement. This section is so ambiguous that we cannot approve the language.

Article III, Section 46

The language in this section is ambiguous, and could be interpreted in a manner that would violate the public interest, convenience or necessity. The Commission believes that GTE could interpret this section to provide the carrier the ability to unilaterally revise the terms of this interconnection agreement pending the outcome of its cost case in Cause No. 40785-S2, or any other Commission proceedings that concern GTE's costs. If GTE's costs or revenues change as the result of a Commission proceeding, the language in this section could be interpreted to allow GTE to retroactively seek compensation from Time Warner as a result of such change. This is not in the public interest for several reasons.

First, were the Commission to approve this language, it might be precluded from prescribing how GTE is to identify and recover its costs at some point in the future by giving the carrier blanket authority to renegotiate this agreement. For example, GTE might seek to recover costs from Time Warner after the Commission has found that GTE has no right to recover such costs.

Second, this language could undermine the Commission's previous orders by allowing GTE to renegotiate, and retroactively apply, different rates, terms and conditions to Time Warner if GTE does not agree with, or reinterprets, an applicable Commission order. Normally, when a regulatory change occurs, the appropriate regulatory body (e.g., the FCC or the IURC) prescribes how carriers are to institute these changes; this section could be interpreted to allow GTE to unilaterally decide how the agreement should be renegotiated, in violation of terms and conditions mandated by the appropriate regulatory agency, thus potentially undermining the authority of the FCC or the IURC.

Indeed, other provisions contained in this agreement (e.g., the sections in Article III on "regulatory agency control" (31), "changes in legal requirements" (32), "severability" (38), and "subsequent law" (40)) all attempt to provide avenues for GTE and Time Warner to renegotiate or reinterpret this agreement if there is a change in regulatory policy either at the federal or state level; as such, other language in the agreement provides the same relief that a benign interpretation of Article III, Section 46 grants.

Additionally, Appendix 46A and Appendix 46B to this Agreement also must be rejected by the Commission because they are inserted pursuant to Article III, Section 46, which has been found to violate the public interest, convenience, and necessity, as described in section 252(e)(2)(A)(ii) of TA-96.

Article IV, Section 8

The FCC's recent slamming order[3] precludes a carrier that is executing a primary interexchange carrier (PIC) or local exchange carrier (LEC) change (e.g., GTE), from verifying such change. The responsibility for verification lies with the submitting carrier. Even though the FCC order has been stayed for purposes of considering the use of a third-party administrator, this Commission is in the process of adopting the FCC rules. Therefore, the provisions contained in Article IV, Section 8, which require a letter of agency to be submitted to GTE by Time Warner before a carrier change request is processed, are not in compliance with FCC rules, and as such, should not be approved.

Article VI, Section 2.1.2

This section of the agreement contradicts the Commission's July 1, 1996 Order in Cause No. 39983, which defines the services that are and are not available to CLECs for resale (Order at pages 27-29), as well as the "service use prohibitions and restrictions" that are permitted. (Order at pages 35-36) In that Order, the Commission found that it is in the public interest for an ILEC to offer "each and every" retail service, subject to the exceptions clearly set forth by the Commission, to a CLEC at a wholesale rate for subsequent resale to end users. As such, language in this agreement, which does not allow Time Warner to resell lifeline services and services for the disabled, is clearly contrary to the public interest.

Article VI, Section 2.2; Article VII, Section 2.3; and Appendices C and D

In Article VI, Section 2.2 and Appendix C, the interconnection agreement states that GTE's intrastate toll rates subsidize the rates for other services provided by the carrier. These sections seek to establish a monthly interim universal service support surcharge to recover the lost revenue that allegedly results when a CLEC such as Time Warner resells GTE's local service only. In the other sections listed, GTE seeks to impose a similar surcharge where Time Warner purchases UNE loops and ports in order to recover universal service support that GTE alleges is implicit in its retail rates. There are two issues of concern to the Commission in these sections: 1) the avoided cost discount, which is smaller than the discount Time Warner would receive if it purchased services for resale from GTE's interim wholesale tariff; and 2) GTE's position, as stated in the interconnection agreement, that it has the authority to establish an interim universal service support charge. There are several reasons why the Commission finds this language to be contrary to the public interest, convenience and necessity and in violation of prior Commission orders.

First, the Commission's October 28, 1998 Order in Cause No. 40785 states that, while the Commission may have previously found that rates for basic local telephone service did not reflect their true cost, these findings were made prior to TA-96 and thus are obsolete, especially "given the clear language of section 254(k)." (Order at page 21) As such, GTE's assertion that local telephone

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3 In the Matter of Implementation of the Subscriber Carrier Selection Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket 94-129, Second Report and Order, December 17, 1998.

rates are subsidized by intraLATA toll contradicts a prior Commission order, and approval of such language is not in the public interest.

Second, Article VI, Section 2.2 asserts, "GTE believes that this interim surcharge is required by state and federal law." The Commission has not found to date that an intrastate universal service fund is required at this time, and, indeed, refuted GTE's position to that effect in the Commission's October 28, 1998, Order in Cause No. 40785. (Order at pages 23-25) It is not in the public interest for GTE to use this interconnection agreement to circumvent the Commission's previous orders.

Third, the Commission's May 7, 1998 Order in Cause No. 40618 (GTE's UNE/interconnection cost case) denied GTE's request to establish a universal service surcharge to be assessed against CLECs in addition to unbundled network element (UNE) and interconnection rates. Again, the establishment of a similar surcharge in this agreement appears to attempt to circumvent the Commission's previous orders and thus is not in the public interest.

Fourth, the avoided cost discount set forth by GTE is 9.9 percent, far lower than the discount available through GTE's interim wholesale tariff (17 percent). Indeed, Time Warner would appear able to receive better rates if it purchased service out of GTE's interim wholesale tariff. Given that the Commission previously found GTE's 17 percent interim wholesale discount to be in the public interest, the 9.9 percent discount offered in this interconnection agreement violates this standard.

Finally, GTE has attempted to place a restriction on Time Warner, i.e., the assessment of a "universal service" surcharge. This restriction is not of the type this Commission previously approved in Cause No. 39983. Indeed, these sections of the interconnection agreement violate the public interest standard established in Cause No. 39983 because they seek to place such a limitation on Time Warner.

Article VI, Section 2.3.2

This section of the agreement contradicts the findings of the Commission's December 18, 1996 Order on Reconsideration and Resale Issues in Cause No. 39983, which states that an ILEC offering ICAs, ICBs, and CSOs is required to make these arrangements available for resale. (Order at page 6) The Commission's October 15, 1997 Order in that Cause further clarified that the tariffed services included in an ICA, ICB, or CSO are to be provided by the ILEC to CLECs at a wholesale discount, while the non-tariffed components need only be made available for resale at the ILEC's retail rate. Since the Commission found that the tariffed components of these types of service arrangements should be available to CLECs at a discount, GTE's restriction on this discount, as dictated by this agreement, is ambiguous and unduly broad and, therefore, is not in the public interest.

Article VI, Section 2.3.3

This section of the agreement contradicts the Commission's July 1, 1996 Order in Cause No. 39983, which defines the services that are and are not available to CLECs for resale at a wholesale rate (Order at pages 27-29), as well as the "service use prohibitions and restrictions" that are permitted. (Order at pages 35-36) In that Order, the Commission found that it is in the public interest for an ILEC to offer "each and every" retail service, subject to the exceptions clearly set forth by the Commission, to a CLEC at a wholesale rate for subsequent resale to end users. As such, language

in this agreement which does not allow Time Warner to purchase payphone access lines at a discount from GTE is contrary to the public interest, convenience and necessity.

Article VI, Section 2.3.5
This section of the agreement also contradicts the Commission's July 1, 1996 Order in Cause No. 39983, which defines the services that are and are not available to CLECs for resale at a wholesale rate (Order at pages 27-29), as well as the "service use prohibitions and restrictions" that are permitted (Order at pages 35-36). As stated above, the IURC found that it is in the public interest for an ILEC to offer "each and every" retail service, subject to the exceptions clearly set forth by the Commission, to a CLEC at a wholesale rate for subsequent resale to end users. As such, language in this agreement which does not allow Time Warner to purchase operator and directory assistance services at a discount is contrary to the public interest, convenience and necessity.

Article VI, Section 5.3
In this section, the parties propose to calculate the wholesale discount as a "discount dollar amount," rather than as a percentage. Furthermore, the discount dollar amount would not change, regardless of any changes to the underlying retail rates. As we noted above, this Commission has previously approved an interim wholesale discount of 17% for GTE. To the extent the "discount dollar amount," as proposed by the parties, is equivalent to a wholesale percentage discount that differs from any wholesale percentage discount approved by this Commission, then we find that Article VI, Section 5.3 should not be approved.

Article IX, Section 1
Article IX, Section 1 allows GTE to substitute virtual collocation for physical collocation, or even to deny the request entirely, if it can "demonstrat[e] that physical collocation, or perhaps even virtual collocation, is not practical because of technical reasons or space limitations, as provided in Section 251(c)(6) of the Act." We note that Paragraph 40 of the FCC's recent collocation rules[4] appears to allow parties some flexibility regarding the resolution of collocation issues in the context of voluntarily negotiated agreements. However, we are concerned by the reference to Section 251(c)(6) in Article IX, Section 1. The reliance on Section 251(c)(6) to support the agreed-upon language appears misplaced, as the agreed-upon language is, in fact, contrary to the plain language at Section 251(c)(6). We reach no decision at this time on whether the parties' agreed-upon language is in compliance with the FCC's Order and rules. However, for the reasons discussed below, it is clear that the parties cannot rely upon Section 251(c)(6) to support this language. Therefore we find the reference to 251(c)(6) should be rejected.

First, under 251(c)(6), it is this Commission, and not GTE, that must ultimately determine whether physical collocation truly is "not practical" due to any alleged technical or space problems.

Second, the statutory exception for "technical reasons or space limitations" applies only to physical collocation; it does not apply to virtual collocation.

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4 In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket 98-147, released March 31, 1999.

Third, and following from our second point, Section 251(c)(6) does not permit GTE to deny the request for collocation "entirely." Under Section 251(c)(6), if GTE can successfully demonstrate to this Commission, that, for technical reasons and/or space limitations, physical collocation is not possible, then the remedy is for GTE to offer the requesting telecommunications carrier, (in this case, Time Warner), virtual collocation, not to deny the request entirely.

Further, we find that the parties must file Appendices G, H and I when they are executed.

In summary, the Commission is concerned about language throughout this agreement which appears to constitute an attempt by knowledgeable parties to circumvent prior Commission orders, notably orders in Cause Nos. 39983, 40618, and 40785. In this and prior proceedings, the Commission made several findings regarding how GTE is to offer its services to CLECs for resale, the manner in which GTE's costs are to be determined and subsequently recovered, and the need for intrastate universal service funding, among other things. The requirements in these orders were found to further the public interest, convenience, and necessity as well as the pro-competitive goals of TA-96. Therefore, language in this interconnection agreement, which appears to contradict the Commission's previous orders, is not in the public interest. Indeed, the parties to this agreement should be advised that this Commission does not view voluntarily negotiated interconnection agreements as an avenue to avoid implementing provisions in the Commission's previous orders with which the parties may not agree.

The Commission is compelled to point out that this is at least the fifth interconnection agreement (40737 INT 26-28 and 31) between GTE and another carrier that has included the same non-compliant language. As demonstrated above, the Commission declined to approve identical language in orders issued in the aforementioned Causes on April 20-21, 1999 and August 4, 1999. The present agreement, which was filed on May 28, 1999 includes similar language. It appears to the Commission that GTE is not negotiating in good faith, since it persists in including language in its interconnection agreements that the IURC has found does not meet the public interest standard outlined in section 252(e) of TA-96.

The Commission, therefore, concludes that these sections of the proposed interconnection agreements should be rejected. The Commission invites the parties to amend their agreement with more satisfactory language. Attached hereto is a list of previously approved interconnect agreements for adoption pursuant to Section 252(i), along with the Commission's General Administrative Order on adoptions.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The Agreement between GTE and Time Warner submitted for Commission approval on May 28, 1999, be, and is hereby approved in part and rejected in part, pursuant to Section 252(e)(1) of the Act, consistent with the findings set forth in Paragraph 2 of this Order above.

2. This Order shall be effective on and after the date of its approval.

McCARTY, RIPLEY, SWANSON-HULL AND ZIEGNER CONCUR; KLEIN ABSENT:
APPROVED:

AUG 23 1995

I hereby certify that the above is a true
and correct copy of the Order as approved.

Joseph M Sutherland
Secretary to the Commission